IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1111 OF 2005

WITH

CIVIL APPLICATION NO.1367 OF 2005

Dattatraya Bapurai Nanaware & anr..Appellants.

Vs.

Jagannath Bapurai Nanaware ..Respondent.

...

Mr.G.S.Bhat for the Appellants.

Mr.G.H.Gharat for the Respondent.

...

CORAM : DR.D.Y.CHANDRACHUD, J.

12th December, 2005.

P.C. :

1. Admit. Counsel appearing for the Respondent waives service. By consent taken up for hearing and final disposal.

2. The Respondent is the Original Plaintiff in

a suit instituted before the City Civil Court (L.C. Suit 1898 of 1999) for possession of a room admeasuring 15 ft. x 12 ft. The suit was instituted in February 1999 and is now ripe for trial. The First Appellant and the First Respondent are brothers. The suit was on the Board of the Trial Court on 17th February, 2005 when parties were present. An affidavit of evidence and documents came to be filed on that day. The suit was thereafter adjourned to 9th March, 2005. However, the case of the Appellants was that they incorrectly made a noting of the next date for hearing as 9th May, 2005 instead of 9th March, 2005. On 9th March, 2005 the Appellants were absent. The Appellants were thereafter absent on 1st April, 2005 when the decree was passed.

3. On behalf of the Appellants, it has been submitted that their failure to appear was as a result of the bonafide error in making a note of the next date of hearing. The Appellants have filed their written statement and they had participated in the suit at earlier stages. Hence, it was submitted that an order of costs would meet the ends of justice having regard to the status of

the parties and the nature of the dispute. There would be a great miscarriage of justice if the ex parte decree is not set aside.

4. Having heard the learned counsel, I am of the view that this is not one of those cases, where on the conduct of the Defendants it can be inferred that there was a gross neglect to pursue with the defence in the Trial Court. The Appellants have filed their written statement. The suit is ripe for trial. The explanation of the Appellants that there was a wrong noting of the date is not such as should be rejected out of hand particularly when the suit is amongst close relatives and the entire dispute relates to only one room. There is merit in the contention that serious prejudice would be caused if the Appellants are not permitted to defend the suit. In the circumstances, conditional on the Appellants paying costs quantified at Rs.5,000/- to the Respondent on or before 16th December, 2005, which shall be a condition precedent, the order of the Trial Court dated 19th November, 2005 is quashed and set aside. Subject to the payment of costs, the Motion before the Trial Court shall stand absolute in terms of prayer

clauses (a) and (b). In that event, parties shall appear before the Trial Court for directions on 16th December, 2005. The Learned Trial Judge shall set down a time schedule for the early disposal of the suit. The parties shall co-operate in all respects in ensuring that the time schedule is observed. The Appeal from Order is accordingly disposed of.

In view of the disposal of the Appeal from Order, the Civil Application is rendered infructuous and is accordingly disposed of.